

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8.

Rulemaking 11-10-003
(Filed October 6, 2011)

**DECISION GRANTING COMPENSATION TO COALITION OF ENERGY
USERS FOR SUBSTANTIAL CONTRIBUTION TO DECISION 12-05-037**

Claimant: Coalition of Energy Users (CEU)	For contribution to Decision (D.) 12-05-037
Claimed (\$): \$21,368.75¹	Awarded (\$): \$15,330
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: David Gamson, October 13, 2011 Assigned ALJ: Julie A. Fitch, December 08, 2011

PART I: PROCEDURAL ISSUES

- A. Brief Description of Decision:** D.12-05-037 establishes a framework for Commission oversight of the Electric Program Investment Charge (EPIC) established by D.11-12-035 in Phase 1 of this proceeding. The funding is to provide public interest investments in applied research and development, technology demonstration and deployment, market support, and market facilitation, of clean energy technologies and approaches for the benefit of electricity ratepayers of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE). The decision establishes electricity ratepayer benefits as a mandatory

¹ The claimed amount is miscalculated by Claimant. The compensation total should be based on requesting half the hourly rate for intervenor claim preparation. Here, Claimant has based their claim on a full hourly rate for preparation of the intervenor compensation claim. We have adjusted the claimed amount to \$20,525, as necessary for determining if a commenting period is necessary.

guiding principle, adopts several other related and complementary principles designed to guide investment decisions and determines that EPIC funds will be administered 80% by the California Energy Commission (CEC) and 20% by the three Investor Owned Utilities under the oversight and control of the Commission.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	None	Correct, none for Phase 2.
2. Other Specified Date for NOI:		In accordance with Rule 17.1, because no PHC was set in the order, the NOI must be filed within 30 days of the mailing date of the Order Instituting Rulemaking. CEU filed its NOI on November 7, 2011. Since the 30th day fell on Saturday, it was required to be filed on the following Monday, November 7, 2011. CEU's NOI was timely filed.
3. Date NOI Filed:	November 07, 2011	Correct
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number:	Rulemaking (R.) 11-10-003	Correct
6. Date of ALJ ruling:	October 6, 2011	Correct
7. Based on another CPUC determination (specify):	N/A	
8. Has the Claimant demonstrated customer or customer-related status?		Yes

Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.11-10-003	No
10. Date of ALJ ruling:	October 6, 2011	No
11. Based on another CPUC determination (specify):	N/A	See
12. Has the Claimant demonstrated significant financial hardship?		Yes, See CPUC Comment 12 Below
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-05-037	Correct
14. Date of Issuance of Final Order or Decision:	May 31, 2012	Correct
15. File date of compensation request:	July 30, 2012	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I (use line reference # as appropriate):

#	Claimant	CPUC	Comment
12	x		In its filed NOI, CEU did not adequately demonstrate the factual basis for its claim of significant financial hardship.
12		x	In its claim for Intervenor Compensation, CEU provided documentation of the organization’s contributions from the time of establishment in 2010 until 2011, as requested by the ALJ’s ruling on the NOI. These requested documents demonstrate the factual basis for its claim of significant financial hardship. The supporting documents shows that CEU cannot afford to pay, without undue hardship, the costs of effective participation. Additionally, CEU filed supporting information regarding what percentage of its supporters are residential ratepayers to corroborate the showing of significant financial hardship, also requested in the ALJ’s ruling on the NOI. The supplied documentation shows that the economic interest of the individual members of the group is small in comparison to the costs of effective participation in the proceeding. CEU is eligible for an intervenor compensation award.

PART II: SUBSTANTIAL CONTRIBUTION**A. Description of Claimant's contribution to the final decision:**

Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
<p>1. <u>Access to affordable energy and quality jobs for the poor and the working poor</u></p> <p>CEU opposed the EPIC program in its entirety, arguing the extension of the public goods charge contributes to significantly above average energy costs in California and resultant hardship on the poor and the working poor and loss of quality jobs in the energy-intensive manufacturing sector. CEU argued California has created a regulatory climate hostile to job creation and that proposed renewable energy investments have not been shown to be an effective allocation of resources. While CPUC did not ultimately discontinue the program, CEU's comments provided valuable data for CPUC's consideration. Because CEU was a main opponent of the public goods charge in the Legislature, this information is especially valuable because it reflects arguments considered compelling when presented to many California elected representatives.</p> <p>CPUC's decision recommended against market support for commercially viable technologies, as CEU argued was an ineffective allocation of CPUC resources.</p>	<p>1. CEU Opening Comments on the Phase 2 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, at 3.1: 1, 4, 10 and 3.2: 1, 2, 13.</p> <p>2. CEU Opening Comments on the Phase 2 Proposed Decision Establishing Purposes and Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020, whole document.</p> <p>3. "CEU opposes the proposed EPIC program in its entirety. They argue that support for renewable technology development is a poor use of funds as demonstrated by the high-profile failure of the U.S. Department of Energy (DOE) loan guarantee program, including funds that went to Solyndra. CEU also characterizes a 2011 letter to Senator Alex Padilla from the LAO as criticizing the overall value of the PIER program. Further, CEU argues that the high electricity costs in California, to which programs like EPIC contribute, create a drag on the California economy, prevent businesses from opening, and have led to the loss of manufacturing jobs. Finally, CEU argues that while the</p>	<p>Though the Commission did not adopt CEU's position, CEU contributed to the decision with a different perspective on the issue.</p>

	<p>renewables portfolio standard (RPS) program creates demand in a technology-agnostic manner, EPIC runs the risk of picking winners, which is at odds with technology neutrality.” D.12-05-037 at 10-11.</p> <p>4. “CEU argues that research should be expanded to include improving the affordability and achieving environmental benefits using conventional energy technologies.” D.12-05-037 at 37.</p> <p>5. “The Electric Program Investment Charge shall not fund investments in the following defined area, unless the Commission subsequently modifies this requirement during its consideration of an investment plan: a. Market support. Programs that seek to enhance the competitive position of certain preferred, commercially-proven technologies or approaches relative to incumbent technologies or approaches.” D.12-05-037 at 100.</p>	
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<p>2. <u>Appropriateness of an administrative public goods charge extension in light of the Legislature's rejection of similar proposals</u></p> <p>CEU was a main opponent of public goods charge extension proposals considered by the Legislature prior to the referral of the issue to the CPUC. CEU argued rejection of public goods charge extension proposals by the Legislature should ethically and potentially legally preclude the CPUC from acting itself to implement the EPIC.</p> <p>CPUC's decision found that legal authority for the EPIC program did exist, but also acknowledged, as argued by CEU, that certain parts of the former PGC could no longer be funded due to legal constraints arising from the Legislature's decision not to reauthorize the PGC.</p>	<p>1. CEU Opening Comments on the Phase 2 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, at 3.1: 2, 7, 8, 9 and 3.2: 1, 2, 13.</p> <p>2. "In the case of the NSHP, funding would have been recommended on a policy basis, but legal constraints capping the CSI budget limit staff's ability to recommend additional funding without legislative change." D.12-05-037 at 47.</p>	<p>The Commission's finding on the NSHP program had little to do with the legislative failure to reauthorize the PGC.</p>
<p>3. <u>Environmental justice and civil rights issues</u></p>	<p>1. CEU Opening Comments on the Phase 2 Proposed Decision Establishing Purposes and</p>	

<p>CEU originally coordinated opposition to the public goods charge extension in the Legislature by organizations promoting civil rights in the underserved community including the Congress of Racial Equality, International Faith Based Coalition and Frederick Douglass Society. In the proceeding, CEU argued the EPIC program raises equity concerns by disproportionately impacting citizens in the underserved community by acting as a regressive tax and causing losses in well-paying blue collar jobs in the energy-intensive manufacturing sector. CEU furthermore argued the selection of businesses for subsidization raises additional equity concerns because businesses in the underserved community have more difficulty navigating confusing grant acquisition processes because of greater difficulty affording the services of attorneys and lobbyists.</p> <p>CPUC's decision adopted the policy advocated by CEU in abolishing current funding for the NHSP while allowing for adaptation should new legislation create the opportunity for a future return to the program. CPUC was unwilling to borrow to fund the NHSP.</p>	<p>Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020, at 2, 3, 7.</p> <ol style="list-style-type: none"> 2. Finally, CEU argues that while the renewables portfolio standard (RPS) program creates demand in a technology-agnostic manner, EPIC runs the risk of picking winners, which is at odds with technology neutrality." D.12-05-037 at 11. 3. "CEU opposes funding the NSHP altogether, arguing that solar is an expensive technology that primarily benefits the rich. Still, CEU also suggests that the Commission should plan ahead in the event that the Legislature acts to remove barriers to NSHP funding by building in some "headroom" into the EPIC budget." D.12-05-037 at 56. 4. "Thus, although conceptually we would be willing to allocate EPIC funds to help continue the NSHP, we would have to reduce the budget of the CSI general market program in order to do so. Last year, SB 585 (Kehoe, Stats. 2011, Ch. 312) authorized the Commission to add funding to the CSI general market program in order to ensure that it has sufficient budget to reach its goals. Thus, we are not inclined to borrow money from that program to continue to fund NSHP." D.12-05-037 at 57. 	<p>This is an inaccurate description of what CEU argued during this proceeding.</p> <p>CEU's argument to expand the EPIC to include conventional energy technologies did not substantially contribute to D.12-05-037.</p>
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<p>5. <u>Mismanagement in previous administration of the public goods charge</u></p> <p>CEU argued the public goods charge was a costly program that was found to be ineffective in achieving its stated goals, citing an opinion by the Legislative Analyst among other evidence. While CEU opposed the EPIC, CEU also provided suggestions for more effective administration if the Commission chose to continue the program. CEU suggested the proposed Efficiency Council include members of the business community, which was incorporated in the Decision. CEU also argued for further research and permit streamlining in both conventional and renewable energy technology.</p>	<ol style="list-style-type: none"> 1. CEU Opening Comments on the Phase 2 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, at Section 3.3 (at 11-17). 2. CEU Opening Comments on the Phase 2 Proposed Decision Establishing Purposes and Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020, whole document. 3. “CEU argues that research should be expanded to include improving the affordability and achieving environmental benefits using conventional energy technologies.” D.12-05-037 at 34. 4. “The Commission should require the administrators of EPIC to consult with interested stakeholders no less than twice a year, both during the development of each investment plan and during its execution. The following types of stakeholders shall be consulted, at a minimum: <ol style="list-style-type: none"> a. Members of the Legislature, to the extent their participation is not incompatible with their legislative positions; b. Government, including state and local agency 	<p>Confirmed D.12-05-037 did clarify the Commission’s objective as to which stakeholders are expected to be consulted by EPIC administrators during development of investment plans and plan execution. The business community was included in this list of</p>
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	representatives; c. Utilities; d. Investors; e. The California Independent System Operator; f. Consumer groups; g. Environmental organizations; h. Agricultural organizations; i. Academics; j. The business community; k. The energy efficiency community; l. The clean energy industry and/or associations; and m. Other industry associations.” D.12-05-037 at 98.	stakeholders.
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA)² a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Correct
c. If so, provide name of other parties: CLECA, CMTA		Correct

² “The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.”

<p>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>CEU shared the basic position held by CLECA and CMTA that collection of a public goods charge should end. However, CEU's comments complemented these positions by providing a perspective of how the proposal at issue affects everyday citizen energy consumers on the basis of access to affordable energy and quality blue collar jobs. Furthermore, CEU's comments in the Phase II Attachment A Staff Proposal were considerably more extensive than those submitted by CLECA and CMTA and provided extensive policy arguments that public funding of renewable energy is an ineffective and counterproductive use of limited resources. CEU is unique in that it is a nonprofit public benefit corporation representing regular citizens and small business owners who support affordable energy, economic freedom and job creation. The proceeding included no other such participant.</p>	<p>Though CEU's comments were largely not adopted by the decision, it did provide a unique perspective that avoided duplication with other parties.</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

a. Concise explanation as to how the cost of Claimant's participation bears a reasonable relationship with benefits realized through participation	CPUC Verified
<p>The formulation of the EPIC program followed the rejection of a public goods charge extension by the State Legislature. CEU was a leading opponent of the proposed extension of the Legislature, where the proposal received only 19 Senate votes, a result that fell short of the required 2/3 supermajority.</p> <p>As a participant in the hearing, CEU enriched the discussion by providing the perspective of an organization that successfully advocated in opposition to the proposal before the Legislature.</p> <p>Furthermore, CEU provided the unique perspective of a grassroots organization of citizen energy consumers and small business owners concerned with affordable energy, economic freedom and job creation. CEU's position and composition offered valuable data to help the Commission in making a decision on this issue.</p>	<p>Confirmed</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>CEU worked quickly and efficiently while simultaneously investing the necessary time and effort to perform a thorough analysis and response to the Commission.</p>	<p>The claimed costs, as adjusted herein, are reasonable and commensurate with the work performed.</p>

c. Allocation of Hours by Issue <ol style="list-style-type: none"> 1. Access to affordable energy and quality blue collar jobs 25%. 2. Impact on job creation 20%. 3. Civil rights and environmental justice 17.5%. 4. Previous waste and mismanagement of the public goods charge program 15%. 5. Appropriateness and legality of an administrative extension 12.5%. 6. Miscellaneous 20%. 	These are not the issues that were outlined in the scoping memo. These issues do accurately correspond to the work detailed on the CEU time sheets that were submitted via email. ³
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B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Eric Eisenhammer (Advocate)	2011	62.5	\$125	See attachment 2	7,812.50	43	\$125	\$5,375
Eric Eisenhammer (Advocate)	2012	48.75	\$125	See attachment 2	6,093.75	34	\$130	\$4,420
Tom Tanton (Expert)	2011	16.5	\$350	See attachment 3	5,775.00	16.5	\$300	\$4,950
	Subtotal:				\$19,681.25	Subtotal:		\$14,745
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Eric Eisenhammer	2012	13.5	\$125	See attachment	1,687.50	9	\$65	\$585
	Subtotal:				\$1,687	Subtotal:		\$585
TOTAL REQUEST \$:					21,368.75 ⁴	TOTAL AWARD \$:		\$15,330

*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly

³ Submitted time sheets are in the Correspondence file.

⁴ This number was calculated incorrectly. Corrected to \$20,525. Please see Footnote 1.

rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

****Travel and Reasonable Claim preparation time is typically compensated at ½ of preparer's normal hourly rate.**

C. CPUC Disallowances, Adjustments, and Comments:

#	Reason
Adjustment to requested claim total	Travel and reasonable claim preparation time is typically compensated at ½ of preparer's normal hourly rate. CEU failed to follow this standard in computing its intervenor compensation claim. The total claimed has been recalculated in Footnote 1 to \$20,525.
Adoption of 2011 and 2012 hourly rate of Eric Eisenhammer	CEU seeks an hourly rate of \$125 for Eric Eisenhammer's work performed in 2011 and 2012. Mr. Eisenhammer has not requested intervenor compensation from the Commission in the past. Mr. Eisenhammer has approximately six years of experience, none of which took place before the Commission. Mr. Eisenhammer's rate is based on the 2011 rates described in Resolution ALJ-267 for non-attorney intervenors in the 0-6 year experience range. According to this filing, Mr. Eisenhammer founded and has worked with the Coalition of Energy Users since November of 2010. From 2011 to 2012, Mr. Eisenhammer was an advocate with approximately six years of experience, mostly outside the scope of work before the Commission, on a few issues similar to those facing the Commission including field work on a campaign in support of AB 32 suspension. We adopt an hourly rate of \$125 for Mr. Eisenhammer's 2011 work. We apply a Cost of Living Adjustment (COLA) of 2.2% to intervenor rates for work done during the 2012 calendar year. ⁵ This COLA adjustment, after rounding, results in an hourly rate for Mr. Eisenhammer of \$130 for 2012.
Reductions in time for lack of efficiency and lack of contribution Eric Eisenhammer	Eric Eisenhammer's time is reduced over the course of the proceeding. Several of Mr. Eisenhammer's timesheet entries appeared to be excessive in light of the lack of depth and breadth of the CEO filings in the proceeding and the lack of contribution on the issues outlined in the scoping memo. Additionally, the number of hours that Mr. Eisenhammer billed to prepare a routine filing like intervenor compensation claims was excessive and has been reduced.
Adoption of hourly rate for Thomas Tanton	CEU seeks an hourly rate of \$350 for Thomas Tanton's work performed in 2011. Mr. Tanton has not requested intervenor compensation from the Commission in the past. Mr. Tanton's rate is based on the 2011 rates described in Resolution ALJ-267 for experts in the 13+ year experience range. According to the filing,

⁵ Resolution ALJ-281.

	Mr. Tanton has approximately 38 years of experience in energy technology and legislative interface including experience as a policy advisor at the CEC but has not yet appeared before the Commission. We adopt an hourly rate of \$300 for Mr. Tanton's work.
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PART IV: OPPOSITIONS AND COMMENTS

**Within 30 days after service of this Claim, Commission Staff
or any other party may file a response to the Claim (see § 1804(c))**

A. Opposition: Did any party oppose the Claim?	No
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B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?	Yes
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FINDINGS OF FACT

1. Coalition of Energy Users has made a substantial contribution to Decision 12-05-037.
2. The requested hourly rates for Coalition of Energy Users representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$15,330.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Coalition of Energy Users is awarded \$15,330.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall pay Coalition of Energy Users their respective shares of the award, based on their California-jurisdictional electric revenues for the 2011 calendar year, reflecting the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning October 13, 2012, the 75th day after the filing of Coalition of Energy

User's request for intervenor compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1205037	
Proceeding(s):	R1110003	
Author:	ALJs David Gamson, Julie Fitch	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
Coalition of Energy Users	7/30/2012	\$21,368.75	\$15,330	No	Adopted hourly rate for Eric Eisenhammer and Thomas Tanton. Hours disallowed due to inefficiency and lack of contribution on some issues.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Eric	Eisenhammer	Advocate	Coalition of Energy Users	\$125	2011	\$125
Eric	Eisenhammer	Advocate	Coalition of Energy Users	\$125	2012	\$130
Tom	Tanton	Expert	Coalition of Energy Users	\$350	2011	\$300